

#04-26-OAB
PUBLIC CONTRACTING REFORM ORDINANCE

Be It Enacted by the Township of Berkeley:

Preamble

Whereas, professional business entities are exempt from public bidding requirements, and

Whereas, it has become common for professional business entities to make substantial political contributions to the election campaigns of the local government elected officers who are ultimately responsible for awarding professional service contracts or other contracts or agreements which are not subject to public bidding; and

Whereas, substantial local political contributions from professionals receiving discretionary contracts from the elected officials who receive such contributions raise reasonable concerns of the part of taxpayers as to their trust in the process of local government, if not the quality or cost of services received, and

Whereas, pursuant to N.J.S.A. 40A:11-5 AND N.J.S.A 40:48-2, municipalities have the right to establish rules and procedures for contracting with professional business entities,

Now therefore, be it resolved, that the policy of the Township of Berkeley will be to create such a regulation which states that a professional business entity which makes political contributions to municipal candidates and municipal and county political parties shall be ineligible to receive a public professional service contract from the Township of Berkeley.

SECTION 1

Prohibition on Awarding Public Contracts to Certain Contributors

- (a) Any other provision of law to the contrary notwithstanding, the municipality or any of its purchasing agents or agencies or those of its independent authorities, as the case may be, shall not enter into an agreement or otherwise contract to procure professional business entity, if that entity has solicited or made any contribution of money, or pledge of a contribution including in-kind contributions, to a campaign committee of any Township of Berkeley municipal candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Township of Berkeley or County of Ocean party committee, or to any political action committee that is organized for the primary purpose of promoting or supporting Township of Berkeley municipal candidates or municipal officeholders (PAC) within two calendar years immediately preceding the date of the contract or agreement.
- (b) No professional business entity which enters into negotiations for, or agrees to, any contract or agreement with the municipality or any department or agency thereof or of its independent authorities for the rendition of professional, banking or insurance coverage services or any other no-bid consulting services shall knowingly solicit or make any contribution of money, or pledge of a contribution including in-kind contributions, to any Township of Berkeley candidate or holder of the public office having ultimate responsibility for the award of the contract, or to any Township of Berkeley or County of Ocean party committee, or to any PAC that is organized for the primary purpose of promoting or supporting Township of Berkeley municipal candidates or municipal officeholders between the time of first communications between that business entity and the Township regarding a specific professional services agreement and the later of the termination of negotiations or the completion of the contract or agreement.
- (c) For purposes of this ordinance, a "professional business entity" is any entity seeking or performing a public contract for professional, banking or insurance coverage services or any other no-bid consulting services and which may be an individual including the individual's spouse, if any, and any child living at home; a person; firm; corporation; professional corporation; partnership; organization; or association. The definition of a business entity includes all principals who own 10% or more of the equity in the corporation or business trust, partners, and officers in the aggregate employed by the entity as well as any subsidiaries directly controlled by the business entity.
- (d) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
- 1) The Township of Berkeley Council, if the contract requires approval or appropriation from the Council.

FILED

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NINA MITCHELL WELLS
SECRETARY OF STATE

- 2) The Mayor of Township of Berkeley, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of contract is appointed by the Mayor.

SECTION 2

Contributions Made Prior to the Effective Date

No contribution of money or any other thing of value, including in-kind contributions, made by a professional business entity to any municipal candidate for Mayor or Council, or municipal or county party committee or PAC referenced in this ordinance shall be deemed a violation of this section, nor shall an agreement for property, goods, or services, of any kind whatsoever, be disqualified thereby, if that contribution was made by the professional business entity prior to the effective date of this section.

SECTION 3

Contribution Statement by Professional Business Entity

- (a) Prior to awarding any contract or agreement to procure professional services, or banking or insurance coverage services or any other no-bid consulting services, with any professional business entity, the Township or any of its purchasing agents or agencies, as the case may be, shall receive a sworn statement from the professional business entity made under penalty of perjury that the bidder or offer or has not made a contribution in violation of Section I of this Ordinance;
- (b) The professional business entity shall have a continuing duty to report any violations of this ordinance that may occur during the negotiation or duration of a contract. The certification required under this subsection shall be made prior to entry into the contract or agreement with the Township and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 4

Return of Excess Contribution

A professional business entity or Township Candidate or officeholder or Municipal or County party Committee or PAC referenced in this ordinance may cure a violation of Section I of this ordinance, if, within thirty (30) days after the general election, the professional business entity notifies the Township Council in writing and seeks and receives reimbursement of a contribution from the Township Candidate or Municipal or County political party or PAC referenced in this ordinance.

SECTION 5

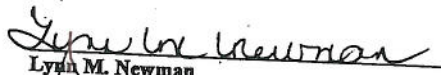
Penalty

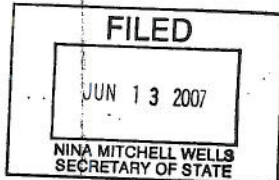
- (a) All Township of Berkeley agreements with professional business entities shall provide that it shall be a material breach of the terms of the government contract for a professional business entity as defined in Section 1 (c) to violate, or to aide or abet a violation, of Section 1 (a) or (b) or to knowingly conceal or misrepresent contributions given or received, or to make or solicit contribution through intermediaries for the purpose of concealing or misrepresenting the source of the contribution.
- (b) Any professional business entity as defined in Section 1 (c) who knowingly fails to reveal a contribution made in violation of this ordinance, or who knowingly makes or solicits contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution, shall be disqualified from eligibility for future Berkeley Township contracts for a period of four (4) calendar years from the date of the violation.

SECTION 6


Severability and Repealer

- (a) If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance. The drafters of this ordinance and the voters signing the initiative petition supporting the passage of this ordinance hereby declare that they would have signed the initiative petition supporting the passage of this ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases may be declared unconstitutional, invalid or unenforceable.
- (b) And any ordinance inconsistent with the terms of this ordinance is hereby repealed to the extent of such inconsistency.


Lynn M. Newman
Council President



CERTIFICATION

I hereby certify that the within ~~ordinance~~ ^{RESOLUTION} was finally passed by the governing body of the Township of Berkeley, in the County of Ocean on the 24 day of Aug. 2004.
In witness whereof I have hereunto set my hand and the official corporate seal of said Township this 27 day of Aug. 2004.

Beverly M. Carle, Township Clerk